

Regular Session, 2009

HOUSE BILL NO. 140

BY REPRESENTATIVES CHANEY, EDWARDS, ROSALIND JONES, MILLS, AND
TEMPLET

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact Civil Code Articles 178, 179, 199, and 200, relative to filiation; to authorize the
3 Louisiana State Law Institute to provide comments to Civil Code Article 186 and to
4 include those comments in this Act; to authorize the Louisiana State Law Institute
5 to redesignate and rename the headings of Chapters 1 through 4 of Title VII of Book
6 I of the Civil Code and the headings of the Sections and Subsections within those
7 Chapters; to provide for the establishment of filiation; to provide for the effect of
8 adoption; to provide for the adoption of minors; to provide for retroactive
9 application; to provide a special effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Civil Code Articles 178, 179, 199, and 200 are hereby enacted to read as
12 follows:

13 TITLE VII. PARENT AND CHILD

14 CHAPTER 1. ~~PROOF OF MATERNITY~~ FILIATION

15 Art. 178. Definition

16 Filiation is the legal relationship between a child and his parent.

17 Revision Comment - 2009

18 This Article is new but the definition of *filiation* is consistent with doctrine.
19 See J.R. Trahan, *Glossae on the New Law of Filiation*, 67 LA. L. REV. 387, 388 n. 1
20 (2007); and Katherine Shaw Spaht and William Marshall Shaw, Jr., *The Strongest*
21 *Presumption Challenged: Speculations on Warren v. Richard and Succession of*
22 *Mitchell*, 37 La. L. Rev. 59 (1976). See also Gérard Cornu, *DROIT CIVIL: LA FAMILLE*
23 No. 195, at 313 (7th ed. 2001); Francesco Messineo, 2 *MANUALE DI DIRITTO CIVILEE*
24 *COMMERCIALE: DIRITTI DELLA PERSONALITÀ, DIRITTI DELLA FAMIGLIA, DIRITTI REALI*
25 § 62, No. 1, at 145 (9th ed., Milano, 1965); Eduardo A. Zannoni, 2 *DERECHO CIVIL:*
26 *DERECHO DE FAMILIA* § 793, at 283 (2d ed., Buenos Aires, 1989); Caio Mário da
27 Silva Pereira, 5 *INSTITUIÇÕES DE DIREITO CIVIL: DIREITO DE FAMÍLIA* No. 410, at 173-
28 74 (7th ed., Rio de Janeiro, 1991); and Jean Carbonnier, *DROIT CIVIL: LA FAMILLE:*
29 *L'ENFANT, LE COUPLE* 181-82 (20th ed. 1999). This Article introduces the subject

1 matter that follows in Title VII, including how the legal relationship of parent and
2 child is established, *see* Civil Code Article 179 (Rev. 2009), *infra*, and the legal
3 consequences thereof.

4 Art. 179. Establishment of filiation

5 Filiation is established by proof of maternity or paternity or by adoption.

6 Revision Comment - 2009

7 There are two methods for establishing the filiation of a child to his mother
8 and father: by proof that a particular person is his father and a particular person is
9 his mother under the provisions of Chapter 2 or by adoption under Chapter 3. Proof
10 of maternity or paternity may consist of evidence including factual circumstances
11 that create presumptions of paternity, testimony, documents, or the results of
12 scientific tests.

13 * * *

14 CHAPTER 3. FILIATION BY ADOPTION

15 SECTION 1. EFFECT OF ADOPTION

16 Art. 199. Effect of adoption

17 Upon adoption, the adopting parent becomes the parent of the child for all
18 purposes and the filiation between the child and his legal parent is terminated, except
19 as otherwise provided by law. The adopted child and his descendants retain the right
20 to inherit from his former legal parent and the relatives of that parent.

21 Revision Comments - 2009

22 (a) This Article does not change the law as to the effect of an adoption. It
23 severs the legal relationship between the person who is adopted and his legal parents
24 and relatives with a few exceptions and establishes the legal relationship of child and
25 parent between the person who is adopted and the adoptive parent.

26 (b) Among the exceptions to the severance of the legal relationship between
27 the person adopted and his legal parents and relatives are: (1) the retention of the
28 right to inherit by the adopted child from his former legal parent and other relatives
29 of that parent (this Article, second sentence), (2) the retention of the legal
30 relationship between a child who has been adopted and a legal parent if the legal
31 parent is married to the adoptive parent (Children's Code Article 1256 and La. R.S.
32 9:461), and (3) the right of the parents of a legal parent at the time of the adoption
33 to seek visitation with the child (Children's Code Article 1264).

34 SECTION 2. ADOPTION OF MINORS

35 Art. 200. Adoption of minors

36 The adoption of minors is also governed by the provisions of the Children's
37 Code.

38 Revision Comment - 2009

1 Even though the Children's Code regulates extensively the process of the
2 adoption of minors and contains provisions as to the effect of the adoption once a
3 judgment is rendered, the Civil Code also provides for the effect of an adoption. *See*
4 Civil Code Articles 199, *supra*, and 3506(8) (defining *children* to include those who
5 have been adopted).

6 Section 2. The following comments to Civil Code Article 186 are hereby provided
7 as follows:

8 Revision Comments -- 2009

9 (a) This Article clarifies the law. This Article contemplates that a child may
10 be born within three hundred days of termination of a marriage, and the date of his
11 birth may occur after his mother has remarried. *See* former Civil Code Article 186
12 (1870). It, just as prior law did, resolves the dilemma of overlapping presumptions
13 that can arise under Civil Code Article 185 (Rev. 2005).

14 (b) When "dual paternity" is created by the effect of overlapping
15 presumptions, this Article provides that if the first marriage terminates and a second
16 is contracted before the birth of the child, the first husband is presumed to be the
17 father of the child. To do otherwise would be for the law to presume in effect that
18 the mother committed adultery during the first marriage.

19 (c) The last paragraph of this Article is new. The source is German Civil
20 Code § 1600 and, to a lesser extent, Swiss Civil Code Article 257. This provision
21 assures that when the husband to whom the presumption of paternity ultimately
22 applies, or his successor under Civil Code Article 190 (Rev. 2005), has successfully
23 disavowed the paternity of the child, the other husband will be presumed to be the
24 father of the child. Such a result does not necessarily follow without explicit
25 statutory language. Protection of the child from the social stigma of illegitimacy and
26 the necessity of proving paternity justifies the result.

27 (d) Under the last paragraph of this Article, if the presumption that applied
28 to the first husband is rebutted in a disavowal action, then the presumption that had
29 applied to the second husband and been displaced will be resurrected. In fairness to
30 the second husband, however, this provision permits him to disavow the paternity of
31 the child within one year from the day that the judgment of disavowal became "final
32 and definitive," which means final and no longer subject to appeal. Louisiana Code
33 of Civil Procedure Articles 2166 and 2167 describe the effect of these terms.

34 (e) The period of time for instituting the second disavowal action is
35 explicitly preemptive, rather than prescriptive as in Civil Code Article 189 (Rev.
36 2005). The reason the period is preemptive is that the first husband to whom the
37 prescriptive period applied has a year to institute the action with potential
38 suspensions and interruptions and the other husband was notified and made a party
39 to the disavowal action. *See* R.S. 9:401 (2006). The desirability of a relatively short
40 period of time for resolving paternity, and thus the status of the child, justifies the
41 preemptive nature of the time period afforded to the second husband to institute a
42 disavowal action.

43 (f) Indispensable parties to this action include the person presumed to be the
44 father of the child and the person who will be presumed to be the father if the action
45 is successful. *See* R.S. 9:401 (2006). *See, generally, Ebey v. Harvill*, 647 So.2d 461
46 (La. App. 2 Cir. 1994), where the first husband of the mother, who was the presumed
47 father of the child, was held to be an indispensable party to a paternity action by the
48 mother against the second husband.

(g) This Article does not apply to "dual paternity" created by the existence of a presumed father and a biological father to whom the presumption of Civil Code Article 185 (Rev. 2005) does not apply. Such cases are governed by the provisions of Civil Code Articles 197 and 198 (Rev. 2005).

Section 3. The Louisiana State Law Institute is hereby authorized to redesignate and rename the headings of Chapters 1 through 4 of Title VII of Book I of the Civil Code and the headings of the Sections and Subsections within those Chapters, as follows:

TITLE VII. PARENT AND CHILD

CHAPTER 1. ~~PROOF OF MATERNITY~~ FILIATION

(C.C. Arts. 178 and 179.)

CHAPTER 2. ~~PROOF OF PATERNITY~~ FILIATION BY PROOF OF MATERNITY OR PATERNITY

SECTION 1. ~~THE PRESUMPTION OF PATERNITY OF HUSBAND; DISAVOWAL OF PATERNITY; CONTESTATION; ESTABLISHMENT OF PATERNITY~~ PROOF OF MATERNITY

(C.C. Art. 184.)

~~SUBSECTION A. THE PRESUMPTION~~

~~SUBSECTION B. DISAVOWAL~~

~~SUBSECTION C. CONTESTATION AND ESTABLISHMENT OF PATERNITY~~

SECTION 2. ~~PRESUMPTION OF PATERNITY BY SUBSEQUENT MARRIAGE AND ACKNOWLEDGMENT~~ PROOF OF PATERNITY

SUBSECTION A. THE PRESUMPTION OF PATERNITY OF HUSBAND; DISAVOWAL OF PATERNITY; CONTESTATION; ESTABLISHMENT OF PATERNITY

(C.C. Arts. 185 through 194.)

SUBSECTION B. PRESUMPTION OF PATERNITY BY SUBSEQUENT MARRIAGE AND ACKNOWLEDGMENT

(C.C. Art. 195.)

SUBSECTION C. OTHER METHODS OF ESTABLISHING PATERNITY

(C.C. Arts. 196 through 198.)

1 ~~SECTION 3. OTHER METHODS OF ESTABLISHING PATERNITY~~

2 CHAPTER 3. FILIATION BY ADOPTION

3 SECTION 1. EFFECT OF ADOPTION

4 (C.C. Art. 199.)

5 SECTION 2. ADOPTION OF MINORS

6 (C.C. Art. 200.)

7 SECTION 3. ~~CHAPTER 4~~ ADOPTION OF ADULTS

8 (C.C. Arts. 212 through 214.)

9 CHAPTER 4. FILIATION OF CHILDREN BY ASSISTED REPRODUCTIVE

10 TECHNOLOGY [RESERVED]

11 Section 4. The provisions of this Act relative to the enactment of Civil Code Articles
12 199 and 200 are declared to be curative and remedial and therefore shall be applied
13 retroactively to January 1, 2009, as well as prospectively.

14 Section 5. This Act shall become effective upon signature by the governor or, if not
15 signed by the governor, upon expiration of the time for bills to become law without signature
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
18 effective the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____